

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SHERMAN PEGROSS,

Plaintiff,

v.

Case Number 07-12839
Honorable David M. Lawson

THE U.S. MARSHAL'S SERVICE FOR THE
EASTERN DISTRICT OF MICHIGAN,
THE WAYNE COUNTY JAIL, THE SANILAC
COUNTY JAIL, THE OAKLAND COUNTY JAIL,
THE OAKLAND COUNTY JAIL TRANSPORT,
OFFICER M. DIAZ and OAKLAND COUNTY
JAIL SUPERVISOR CARNEY,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

Presently before the Court is the report issued on November 19, 2008, by Magistrate Judge Virginia M. Morgan pursuant to 28 U.S.C. § 636(b) recommending that this Court grant in part and deny in part the defendant's motion to dismiss. Specifically, the magistrate judge recommends that Oakland County be substituted for Oakland County Jail as the proper defendant, that defendant Carney be dismissed with prejudice for lack of personal involvement, and that the Clerk's office issue new summons and the Marshals re-serve Oakland County and Officer Diaz.

Although the magistrate judge's report explicitly stated that the parties to this action may object to and seek review of the recommendation within ten days of service of the report, no objections have been filed. The parties' failure to file objections to the Report and Recommendation waives any further right to appeal. *Smith v. Detroit Federation of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases

the Court from its duty to independently review the motion. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). However, the Court agrees with the findings and conclusions of the Magistrate Judge.

Accordingly, it is **ORDERED** that the defendant's motion to dismiss is [dkt. #39] **GRANTED IN PART and DENIED IN PART**.

It is further **ORDERED** that Defendant Carney is **DISMISSED with prejudice** from the case.

It is further **ORDERED** that Oakland County is substituted for Oakland County Jail as a defendant in this case.

It is further **ORDERED** that the Clerk's Office shall issue summons for Oakland County and Oakland County Deputy Sheriff M. Diaz, and the United States Marshal shall serve the complaint and other appropriate papers on Oakland County and Diaz. The Marshal may collect the usual and customary costs from the plaintiff after effecting service.

s/David M. Lawson

DAVID M. LAWSON
United States District Judge

Dated: December 11, 2008

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on December 11, 2008.

s/Felicia M. Moses

FELICIA M. MOSES